

**FREQUENTLY ASKED QUESTIONS ON THE NEW AGENCY DISCLOSURE
REGULATION TAKING EFFECT SEPTEMBER 1, 2001**

1. Why was the agency regulation changed?

The regulation simplifies the agency disclosure process by:

1. reducing paperwork and forms;
2. providing an easy dual agency consent form;
3. giving the licensee more time to perform disclosure rather than “attacking the consumer” with paper when the consumer walks in the door.

2. How was the agency regulation changed?

Most of the concepts of the new regulation are the same as the old concepts. However, the law has been streamlined and some requested changes have been made.

One of the biggest changes is that you will not have to provide agency disclosure to someone who is already represented by another real estate company. If another licensee brings a consumer to your listing, you have no duty to provide disclosure to that party of your relationship with your client.

3. How will the September 1, 2001 effective date be implemented?

If you have contact with a consumer which “triggers” the regulation on or after September 1, 2001, you must use the new form.

4. What if I am “in the middle of a transaction” on September 1 and I am already acting under the old regulation? Do I have to switch to the new forms during the middle of the transaction?

NO. If you are in the middle of a transaction on September 1, 2001, you may continue to use the old forms. You will be required to use the new forms when the “initial triggering event” occurs on or after September 1, 2001.

5. Will I be in compliance with the law if I use the new form prior to September 1?

NO. The old forms are law until September 1.

6. May I print the new form on the front and back of one piece of paper?

YES. HOWEVER, you must submit this change to the KREC for approval like any other change to the Agency Disclosure Form. It is possible to print the new form on one piece of paper if you utilize the front and back of the paper. You will, however, need to amend the language on the Agency Disclosure Form that states “I have received and read the Agency Information and Disclosure Form consisting of this page and one other page.”

7. Can you explain, in layman’s terms, how Section A of the new form works?

You should let the consumer read the explanation of different agency possibilities. Section A should be completed and delivered to an unrepresented consumer prior to one of three “triggering events.”

8. What are the “triggering events” for completion and delivery of Section A?

1. Before entering a representation agreement with the consumer or writing or presenting an offer for the consumer;
2. Before receiving confidential information from the consumer;
3. Before the end of the second contact with the consumer.

9. Please explain how I complete and deliver Section A to a seller?

Section A of the new law will be completed at the time of listing just like Section A of the current agency regulation.

10. Please explain how I complete and deliver Section A to the buyer?

If a buyer comes to an open house without a licensee, you should control this conversation in such a way as **not to receive confidential information** from the buyer until you have completed and delivered Section A. You can say something like: “Let me explain the various ways our company can assist you before you give me any specific information about your financial situation.” You can then market your company’s services to the buyer.

If the buyer comes to an open house without a licensee and is considering writing an offer, you must definitely complete and deliver Section A to a buyer **prior to writing or delivering an offer on behalf of the buyer.**

If you meet with the buyer and market your company to the buyer and the buyer decides to “think about” making an offer or utilize your services, you will, of course, invite the buyer back for a second discussion in an attempt to obtain the business. If the buyer returns for a second discussion, you should complete and deliver Section A to the buyer **by the end of the second discussion.**

11. Summarize when I have to complete and deliver Section A to a buyer:

Complete and deliver Section A:

- a. before receiving confidential information from the buyer;
- b. before submitting an offer on behalf of the buyer or entering a representation agreement with the buyer;
- c. before the conclusion of the second contact with the buyer.

12. Please explain how I can complete and deliver Section A before receiving confidential information from the buyer?

Brokers state that consumers are uncomfortable “being attacked with paper” upon entering an open house or coming to a real estate office to discuss the possibility of buying property. The new law addresses this concern by not requiring delivery of any agency form “on first contact.” This change gives you some flexibility in how you work Section A into your individual marketing approach.

However, an unrepresented consumer at an open house is probably the individual most at risk of unintentionally disclosing confidential information. The Commission suggests you be very clear and direct with a consumer that approaches you at an open house. You should indicate you need to discuss possible relationships with the buyer before the buyer discloses information that would compromise his negotiating position in the transaction.

Are there any magic words here? No, but you might say something like:

“Thanks for your interest in the property. I am the listing agent on this property. At some point, you might want to write an offer on this property. However, before you do that, we will definitely want to determine our relationship. But we can talk about that later. I know you want to look at the property so let’s go through it. But please do not tell me anything about your ability to pay or your financial situation until we have established our relationship. This is very important so let’s not discuss that until we have established our relationship. Are we clear on that? Good, now let’s look at this property.”

Words to this effect may take one or two minutes.

Another way to prevent receiving confidential information from a buyer is to go ahead and complete and deliver Section A when the buyer approaches you. When the buyer approaches you, you can say something like this:

“It is great you want to view the property and write an offer on the property. I am the listing agent on this property. In order to be very clear, let’s take a few minutes so we can discuss my role in this transaction. This state-required form summarizes different ways real estate licensees can assist sellers and buyers. So why don’t we take a few minutes and deal with this right now. We will then be able to view the property and hopefully write an offer today.”

The Real Estate Commission is not going to dictate how you handle this situation. Your company can decide which alternative is best by reviewing your marketing strategy, liability and risk-management concerns, and general company philosophy. The Commission’s interest here is seeing that the Section A is delivered before an unrepresented consumer gives any confidential information to you.

13. Our company does not use dual agency. Do we have to complete and deliver Section B?

NO. Section B is required only when dual agency is being utilized. This is marked clearly at the top of Section B.

14. Our company utilizes dual agency. Do we have to complete and deliver Section B?

YES. If dual agency is being utilized in the particular transaction, you must complete and deliver Section B.

15. Designated agency is being utilized in this transaction. Does Section B need to be completed and delivered?

YES. Since the principal broker serves as a dual agent during designated agency, Section B should be completed.

16. Dual agency is being utilized in a transaction. When does Section B need to be completed and delivered?

Section B must be completed and delivered to the buyer before writing the offer for the buyer and completed and delivered to the seller before the offer is submitted to the seller.

17. Dual agency is being utilized. How are the forms completed?

Remember, dual agency means you represent two parties equally in a transaction but in a limited capacity. When you engage in dual agency, you are representing both the buyer and the seller in the transaction. As a general rule, you will need to disclose any special relationship you have with one party to the other party and any financial involvement or party involvement by any licensee with your company.

There will be one Section B for the buyer and one for the seller.

18. Do I have to disclose in Section B if I am acting as a party in the transaction?

YES. If you, any of your company associates or the company principal broker are acting as parties to the transaction, Section B requires disclosure of that information.

19. What if I, or another licensee with our company, has a financial interest in the transaction? Does this need to be disclosed in Section B?

YES. If any licensee with a company (including the principal broker) has a financial interest in the property, or anticipates having a financial interest in the property, this must be disclosed in Section B. Real estate brokerage fees are not considered a financial interest in the property.

20. Dual agency is being utilized. What are the three special relationships with the other party that must be disclosed on the form?

Family, personal, and business relationships with one party must be disclosed to the other party.

Let's say the seller is your mother. You will utilize Section B to disclose that relationship to the buyer. Your relationship with your mother is a "special relationship" which the other party who you represent would want to know.

The form you give the buyer will disclose any "special relationship" you have with the seller. The form you give the seller will disclose any "special relationship" you have with the buyer.

21. What is a business relationship?

A business relationship is anytime the licensee and the consumer have a mutual ongoing economic interest. In layman's terms, this means any relationship where the two have an interest in some endeavor, business, partnership, etc. where both are financially involved.

22. Can you give some examples of a "business relationship"?

YES. If the licensee and consumer own a grocery store together, are partners in a real estate development project, or have other similar business interests, they have a "business relationship".

23. Are past real estate deals considered an "ongoing economic interest"?

YES. If the licensee and consumer have engaged in at least one prior real estate relationship whereby the licensee earned a commission, the licensee has a business relationship with that consumer.

24. What if the consumer is a third-cousin? Is this considered a family relationship?

YES. Any known family relationship, regardless of the distance of the relationship, is a family relationship, which should be disclosed on Section B. The licensee must be aware of the family relationship in order to disclose the relationship.

This means (for example) that a consumer may be the fifth-cousin of the licensee, but the licensee may not be aware the two are related. The licensee is in compliance if he/she does not disclose this family relationship, since the law only requires disclosure of all **known** family relationships.

25. What if I am unsure whether my relationship with the consumer should be disclosed?

If you are unsure whether the relationship is a business, personal, or family relationship, you should disclose the relationship. More disclosure is generally better than less disclosure.

26. Dual agency is being utilized. I have completed the forms. How do I deliver the forms?

You give the appropriate form to each party and obtain the signature of the party on the proper form. You then retain the copies in your transaction file.